

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
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Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands)	WT Docket No. 03-66 RM-10586
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Part 1 of the Commission's Rules B Further)	WT Docket No. 03-
67		
Competitive Bidding Procedures)	
)	
Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service)	MM Docket No. 97-217
)	
Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions)	
)	
Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Licensing in the Multipoint Distribution Service and in the Instruction Television Fixed Service for the Gulf of Mexico)	WT Docket No. 02-68 RM-9718
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To: The Commission		

**REPLY COMMENTS OF
INDEPENDENT MMDS LICENSEE COALITION**

The Independent MMDS Licensee Coalition ("IMLC") submits this reply to certain proposals advanced in the Comments stage of this proceeding. IMLC, a diverse group of MMDS licensees who have been involved with the industry for more than twenty years, takes issue with several of the proposals advanced by Clearwire Corporation in

connection with license renewal standards.

Build-Out Requirements

Most commenters, including IMLC, urged the Commission to adopt the substantial service standard used by the Commission in most comparable services and to establish a menu of defined safe harbors that would presumptively constitute substantial service. Clearwire proposes a different tack entirely. Instead of assessing license usage in connection with the license renewal process, Clearwire suggests that the Commission should impose a five-year build-out requirement modeled on the now discarded 21.930 standard. (Two-thirds of the licensed area (presumably excluding area licensed to incumbents, though this is not clear) must potentially receive reliable broadband service by every channel group in the licensee's service area within five years of the effective date of the *Report and Order*.¹) Clearwire also proposes to define broadband somewhat more stringently (512 kbps) than the 200 kbps standard used by the Commission to date. While IMLC appreciates Clearwire's interest in ensuring that spectrum is put into service, the standard it proposes is not workable for a number of reasons.

First, under 21.930, BTA licensees had to provide service to two-thirds of the population of the BTA excluding area within the incumbents PSAs. This was a very difficult standard to meet because most of the BTA population invariably is situated

¹ Clearwire indicates that in the case of BTA licensees, the five years would run from the "effective date of the rules" (Comments at p. 20-21), but it is unclear whether they mean the effective date of the *Report and Order* or the effective date of the rules adopted in response to reconsideration petitions.

within the core areas served by the incumbents. This left BTA licensees with an obligation to serve a relatively small and widely scattered population around the fringes of the core area. Generally such service made no sense economically or technically since it required service where the demand was not great and where the cost would be highest. Under Clearwire's proposal (assuming it intends to retain that feature of 21.930), most BTA licensees, probably including Clearwire, would lose their licenses. Obviously, such a standard serves no useful purpose.

Second, even for incumbents with 35 mile GSAs, compliance with the standard would be highly problematical. One of the advantages of the flexibility promised by the new rules is that licensees will be able to quickly put their base stations where there is an immediate demand for service. The market will drive licensees to serve demand where and when it is found. No one is served by rules which artificially require the placement of stations at locations where there may be little demand but where such placement is necessary solely to satisfy a regulatory two-thirds coverage requirement.

Third, the Commission has largely abandoned old-style "build-out" thresholds in comparable services such as 39 GHz and LMDS, instead allowing licensees the full term of their licenses to develop their networks as they see fit. Not only is there no reason to deviate from that more modern approach here, but as even Clearwire acknowledges, this is a new service which is still surrounded by a lot of question marks. It will likely take this service longer to develop than services with blank slates to initiate service plans from, no transitions to go through, and no network of incumbent ITFS licensees whose educational needs must be met. The concept advanced by Clearwire is therefore

inappropriate for this service in particular, and out-of-step with the Commission's contemporary substantial service trend.

Fourth, the threshold proposed by Clearwire is far too high. Most commenters proposed safe harbors in the 20% range, a "substantial service" by any measure. The two-thirds level proposed by Clearwire goes well beyond substantial to near ubiquitous – a much more difficult hurdle to leap, and one much higher than normal renewal standards would ever require. (LMDS and 39 GHz licensees, for example, need only provide service to 4 links per million population.) Clearwire offers no justification for radically increasing the required service levels from the usual Commission norms.

Fifth, Clearwire would apply its standard across the board to all channel groups, apparently including guard bands. Most observers believe that MDS/ITFS spectrum will be used dynamically, with some spectrum held in reserve for growth, some used for guard bands, and some used for non-broadband uplinks. In addition, it is conceivable that the spectrum could be used for mobile telephony which would not require broadband data streams. In all of these scenarios, the licensee under Clearwire's proposal would be deemed not to be using those channels adequately and would lose them. Any renewal or build-out standard must recognize that many channels groups will serve important functions in future MDS/ITFS deployments without necessarily being broadband streams.

Finally, Clearwire suggests that licensees who may have been providing service in the past but are not providing it at the time of assessment should receive no credit at all for past service. (Clearwire Comments at 18) This proposal puts an exaggerated

emphasis on service that happens to take place just before renewal and denigrates the value of all service that was offered earlier in the license term. There is no reason whatsoever why service late in the term should qualify for consideration, but earlier, now terminated, service, should be utterly ignored. The more sensible approach is to give all service equal weight, no matter when in the license term it occurs. The proposed safe harbors should therefore apply to *any* service which has taken place in the service area during the license term regardless of whether it happens to be taking place at renewal time. A licensee which has provided service in the 2001 - 2005 period under the conditions affecting the MDS industry deserves a medal for yeoman performance, not the potential loss of its license.

Clearwire's proposed build-out benchmarks are both unnecessary and too stringent. The Commission should adopt instead its proposed "substantial service" test at renewal time using the safe harbor criteria proposed by IMLC and/or the Wireless Communications Association, and many others.

Respectfully submitted,

Independent MMDS Licensee Coalition

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